

Summary of Legislation to Establish a Department of Homeland Security

December 2002

The Homeland Security Act of 2002 (PL 107-296) will create a Department of Homeland Security, at cabinet level, to plan, coordinate, and integrate U.S. government activities relating to homeland security, including border security, intelligence and critical infrastructure protection, emergency preparedness and response, and science and technology. The act shall take effect 60 days after enactment, and the Administration will have up to one year from that effective date to transfer the component agencies into the new department.

Department of Homeland Security

Structure: The legislation creates a Cabinet department headed by a Secretary and other top management officials, and including four directorates and several other key agencies or components that report to the Secretary. A brief summary of the structure follows:

Secretary of Homeland Security (Title I, Title VII) shall be appointed by the President and confirmed by the Senate. The Secretary is responsible for carrying out the core missions of the department: to prevent terrorist attacks within the United States and protect and prepare for such attacks that do occur, and to carry out all functions of the programs and agencies transferred to the department, including their non-security functions. The Secretary is also responsible for including, as appropriate, state and local governments, the private sector and other entities into the full range of homeland security activities.

The Secretary will be aided by an array of other Senate-confirmed officials including a Deputy Secretary, an Under Secretary for Management, a General Counsel and up to 12 Assistant Secretaries (whose duties are not specified). In addition, the legislation authorizes the following non-confirmed positions: a Chief Information Officer, a Chief Human Capital Officer and a Chief Financial Officer.

Three other positions of note are: (1) an Officer for Civil Rights and Civil Liberties, charged with assessing and reporting on allegations of abuses of civil rights, civil liberties, and ethnic profiling by Department employees and officials; (2) a Privacy Officer to hold primary responsibility for privacy policy in the Department, including conducting a privacy impact assessment of proposed rules of the Department and reporting to Congress annually on Department activities that affect privacy; and (3) a Special Assistant to the Secretary responsible for outreach to and coordination with the private sector.

Directorate of Information Analysis and Infrastructure Protection (Title II) shall be headed by an Under Secretary appointed by the President and confirmed by the Senate, and aided by an Assistant Secretary for Information Analysis and an Assistant Secretary for Infrastructure Protection. The Directorate shall serve as a national-level focal point for the analysis of information available to the United States Government for the purpose of preventing, protecting against, preparing for, and responding to threats of terrorism and other threats.

The Directorate shall also be responsible for carrying out comprehensive assessments of vulnerabilities of the key resources and critical infrastructure of the United States, and develop a comprehensive national plan to secure such resources.

This Directorate shall also be responsible for administering the Homeland Security Advisory System, including having lead responsibility for public advisories related to threats to homeland security.

The following offices are transferred to the Department for assignment to this directorate:

- the Critical Infrastructure Assurance Office of the Department of Commerce;
- the National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section);
- the National Communications System of the Department of Defense;
- the National Infrastructure Simulation and Analysis Center of the Department of Energy and the Energy Security and Assurance Program of the Department of Energy;
- and the Federal Computer Incident Response Center of the General Service Administration.

Directorate of Science and Technology (Title III) shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for managing and supporting research, development, testing, and evaluation activities to meet national homeland security needs. A number of federal laboratory programs are transferred to the Department and will provide the Under Secretary with a core science and technology capability. Other mechanisms for promoting and supporting critical R&D include: a Homeland Security Advanced Research Projects Agency (HSARPA) that will administer a \$500 million Acceleration Fund to initiate and support innovative R&D; a Homeland Security Institute; a

technology clearinghouse; a Homeland Security Science and Technology Advisory Committee; and a university-based research center or centers for homeland security.

The Secretary shall be able to utilize any of the Department of Energy national laboratories or sites through joint research sponsorship agreements and will have a role in setting priorities for certain bioterrorism research programs within the Department of Health and Human Services

Transferred elements are:

- The National Bio-Weapons Defense Analysis Center of DOD
- The Plum Island Animal Disease Center of the Agriculture Department
- An array of Energy Department programs and activities: aspects of the non-proliferation and verification research and development program regarding weapons of mass destruction and the nuclear assessment program; life science activities related to microbial pathogens; the Environmental Measurements Laboratory; the advanced scientific computing research program at Lawrence Livermore National Laboratory.

Directorate of Border and Transportation Protection (Title IV) shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for securing borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including coordinating governmental activities at ports of entry; and administering the duties of the entities transferred to the Directorate. Those entities are:

- the Customs Service (although some revenue functions will remain at Treasury);
- that portion of the Animal Plant and Health Inspection Service that governs agricultural import and entry inspections at points of entry;
- the enforcement programs of the Immigration and Naturalization Service (which shall be organized into a separate Bureau of Border Security with responsibility for border patrol, inspections, detention, removal, and investigations);
- the Federal Law Enforcement Training Center of the Department of the Treasury;
- the Transportation Security Administration (which must be maintained as a distinct entity within the Department for at least two years);
- the Office of Domestic Preparedness of the Department of Justice (which will also absorb the operations of the Office of National Preparedness in FEMA);
- and the Federal Protective Service of the General Services Administration.

also:

- **Visa Regulations:** While the State Department would continue to process visa applications abroad, the Secretary, acting through the Under Secretary for Border and Transportation Security, would have authority to issue regulations concerning the visa process.

Directorate of Emergency Preparedness and Response (Title V) shall be headed by an Under Secretary appointed by the President and confirmed by the Senate. The Directorate shall be responsible for helping ensure the effectiveness of emergency response providers to terrorist attacks, major disasters and other emergencies; providing the federal response to terrorist attacks and major disasters; and building a comprehensive national incident management system with Federal, State and local governments to respond to such attacks and disasters. (Note, however, that the key federal training and preparedness programs for terrorist incidents will be handled by the Office for Domestic Preparedness in the Directorate for Border and Transportation Security)

The following offices are transferred to the Department and assigned to this directorate:

- The Federal Emergency Management Agency, which shall be maintained as a distinct entity;
- the National Domestic Preparedness Office of the FBI of the Department of Justice;
- the Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services;
- the Strategic National Stockpile of the Department of Health and Human Services;
- the functions of the Select Agent Registration Program (HHS and the USDA);
- the FIRSAT Integrated Hazard Information System of NOAA
- the Domestic Emergency Support Teams of the Department of Justice

Bureau of Citizenship and Immigration Services shall be headed by a Director who will be appointed by the President and confirmed by the Senate. This bureau reflects the overhaul of the Immigration and Naturalization Service, under which the

INS as such is terminated and replaced with two bureaus for enforcement and services respectively (the enforcement bureau will be created within the Border and Transportation Security directorate and called the Bureau of Border Security). The Bureau of Citizenship and Immigration Services will generally have responsibility for visa petitions, applications for adjustment of status and change of status, naturalization applications, asylum and refugee applications, and determinations regarding the custody and parole of asylum seekers.

Additionally, an Office of Children's Services will be created within HHS to recognize the special needs and circumstances of unaccompanied alien children. The immigration courts and the board of appeals will remain within the Department of Justice.

Coast Guard: The Coast Guard will be transferred as a distinct entity, reporting directly to the Secretary. Language greatly restricts any diversion of Coast Guard resources to other agencies or away from existing non-security missions.

United States Secret Service, which shall be maintained as a distinct entity, is transferred to the Department.

Office for State and Local Government Coordination is established within the Office of the Secretary to oversee and coordinate programs for and relationships with State and local governments.

Office of International Affairs is established within the Office of the Secretary.

Office for National Capital Region is established within the Office of the Secretary to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region.

Key Provisions:

Civil Service Provisions: (Section 841). The Secretary, jointly with the Director of the Office of Personnel Management (OPM), may prescribe a "human resources management system" (HRMS) for the Department. The legislation grants broad power for this HRMS to waive certain provisions of civil service law, such as those governing the compensation, evaluation, reward, and punishment of employees, but other provisions of law may not be waived. For example, all merit system principles must continue to apply, and prohibited personnel practices must continue to be proscribed; whistleblower and anti-discrimination rights and remedies may not be affected; and the right to bargain collectively will ordinarily be retained. The section specifies that the Secretary and the OPM Director must consult and, if necessary, undertake 30 days of mediation with employee representatives in the development of the human resources management system.

Labor-Management Relations. (Section 842) Existing law allows the President by executive order to exclude an agency from coverage under collective-bargaining law if the President determines such law cannot be applied consistent with national security. Section 842 allows such an executive order for an agency transferred to the Department if the mission and responsibilities of the agency materially change. However, the President may waive that condition if he determines its application would have a substantial adverse impact on the Department's ability to protect homeland security and if he provides Congress a written explanation 10 days in advance.

Liability Protections. The "SAFETY Act" grants liability protection to sellers of products that are certified as "anti-terrorism technologies" by the Secretary of the Department. Other provisions grant certain liability protection to certain airport screening companies for 9/11-related claims, and to manufacturers of certain vaccine additives. Section 304(c) sets up rules addressing liability for government-certified dispensers of smallpox vaccine.

ATF: Transfers the law enforcement functions of the Bureau of Alcohol, Tobacco and Firearms from Treasury to the Department of Justice (ATF revenue functions will remain at Treasury). Additionally, the legislation incorporates the "Safe Explosives Act," which imposes various regulations regarding the distribution or possession of explosive materials.

Critical Infrastructure Information: When companies or State or local agencies voluntarily provide certain information about critical infrastructure to the Department, the information would be shielded from release under the Freedom of Information Act and from use in civil litigation. Such information submitted to the Department and provided to a State or local agency would also be exempt from State or local sunshine laws and would be subject to other limitations on permissible use.

Homeland Security Information Sharing Act - Directs the President to prescribe and implement procedures under which relevant Federal agencies: (1) share relevant and appropriate homeland security information with other Federal agencies,

including DHS, and with appropriate State and local personnel; (2) identify and safeguard homeland security information that is sensitive but unclassified; and (3) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

Amends the Federal Rules of Criminal Procedure to authorize the disclosure of grand jury information: (1) to personnel of a foreign government; and (2) to appropriate Federal, State, local, or foreign government officials to prevent or respond to specified hostile foreign power or domestic or international terrorist threats or actions, or foreign intelligence gathering activities.

Authorizes Federal investigative or law enforcement officers to share electronic, wire, and oral interception information with foreign investigative or law enforcement officers and with any appropriate federal, state, local or foreign government to the extent that it reveals a threat of actual or potential attacks.

Cyber Security Enhancement Act of 2002 - Directs the U.S. Sentencing Commission to review and potentially amend Federal sentencing guidelines to ensure they include sufficiently stringent penalties for an array of cyber crimes, and increases the penalties for an offender who knowingly or recklessly attempts to cause death or serious bodily injury through a cyber attack. The legislation allows an electronic communications service to make disclosures about communications to a governmental entity if the service has a good faith belief that an emergency exists that requires the disclosure.

National Homeland Security Council – Establishes within the Executive Office of the President a National Homeland Security Council to: (1) assess U.S. objectives, commitments, and risks in the interest of homeland security; (2) oversee and review Federal homeland security policies; and (3) make recommendations to the President.

Arming Pilots Against Terrorism Act - Amends Federal transportation law to require the Under Secretary of Transportation for Security to establish a program to deputize volunteer pilots of passenger air carriers as Federal law enforcement officers to defend the aircraft flight decks with firearms or less-than-lethal weapons against acts of criminal violence or air piracy (Federal flight deck officers). Provides for flight crew training.

Counternarcotics – Directs the Secretary to appoint a senior DHS counternarcotics officer to coordinate policy and operations within DHS and between it and other Federal agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

Explosives Detection Systems – Extends the December 31, 2002 deadline for deploying systems to screen all checked baggage on passenger aircraft for explosives. Plans for installing such systems at airports not meeting the original deadline must be submitted to Congress by December 31, 2003.

TIPS, National ID – Prohibits all Federal activities to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System). Also specifies that the legislation does not authorize creation of a national ID system or card.